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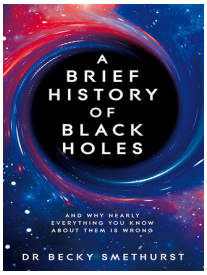

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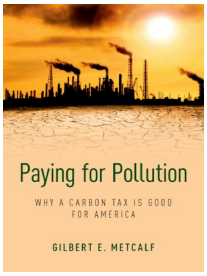

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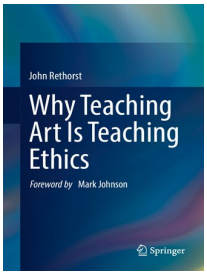

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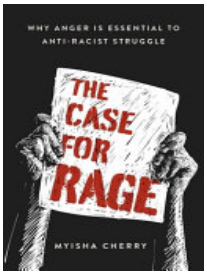

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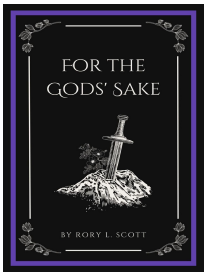

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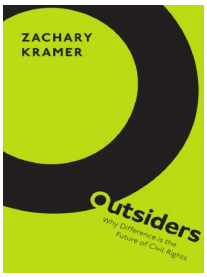

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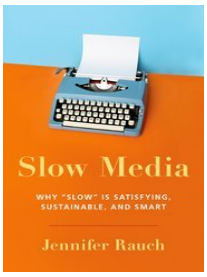

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REBECCA ROACHE

FOR F*CK'S SAKE

WHY SWEARING IS SHOCKING, RUDE, & FUN

For F*ck's Sake

For F*ck's Sake

Why Swearing Is Shocking, Rude, and Fun

REBECCA ROACHE

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For my beloved M and O, the noisy centre of my world, who charmingly believed the c-word to be crap until they found a draft of this book lying around.

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Why give a shit about swearing?

The late Queen Elizabeth II famously described 1992 as an *annus horribilis* in her televised Christmas Message that year. (It means 'horrible *year*'—be sensible you lot, this is Oxford University Press.) At the time, her words rippled through media reports around the world, as journalists speculated about what particular events (and there were a few candidates) could have pushed her to use her address to the nation to bitch about stuff rather than to reflect on her forty years—it was her anniversary!—on the throne. The speech is still discussed more than thirty years later, and thanks to the Netflix series *The Crown*, a new generation is finding out about it. Part of what raised eyebrows at the time was the fact that Her Majesty's mask of propriety had slipped a bit, and revealed her to be . . . well, pissed off. We can all relate to that, can't we? Even if the way in which she vented her annoyance—in Latin, while standing in front of a gold and red velvet throne—is rather distant from our own frustrated behaviour. But what if it hadn't been? What if the way in which she had expressed herself had been much more akin to how old Geraint down the local pub moans about the roadworks on the lane leading down to his farm?

Let's picture how this might have unfolded. Christmas day, 1992, and you're in the UK. Perhaps it's where you live, or maybe you're just visiting. Bloated and snoozy after your Christmas lunch, you give thanks for the elasticated waistband on your shell suit and settle down in front of the TV to eat as much unhealthy food as possible while watching the Queen's speech. There she is on the screen: coiffed and pearl-necklaced in front of her Guildhall throne, with her husband Prince Philip, Duke of Edinburgh on her left, and Prime Minister John Major on her right, just the other side of the ermine-clad Lord Mayor of London. In the hush that follows, she begins to speak.

‘This is not a year on which I shall look back with undiluted pleasure’, she says. ‘In the words of one of my more sympathetic correspondents, it has turned out to be a fucking shit year. I suspect that I am not alone in finding that it has absolutely sucked arseholes. I’m not going to lie to you cunts. One can’t wait to see the fucking back of it’.

What might your reaction have been to witnessing this, do you think? You might respond, at least initially, with shock and disbelief. Perhaps you glance around at your family, a mince pie hovering between your gaping mouth and the crumb-dusted plate on your lap, momentarily speechless. The lot of you might wordlessly seek reassurance from each other that yes, you really did hear what you all thought you heard. After that, in some families, the experience might sour the rest of the day, and you might all gravely ruminate on what the world is coming to. But if your family is anything like mine, your initial shock would instead give way to glee and hilarity. The Queen said *what*? You open another bottle of wine. Argue about who’s going to use the phone first to call friends. (It’s 1992, remember: only estate agents have mobile phones, and WhatsApp hasn’t been invented.) Tell your kids to stop scaring the cats by running around yelling *SUCKED ARSEHOLES!!!!!* Or perhaps, instead, you would just continue watching the TV in rapt silence, not wanting to miss any further sweary outbursts from Her Majesty. Whatever your response, the chances of any of this not making headlines around the world are approximately zero.

But why should any of this be a big deal? People swear all the time. Had you decided to wander to the local pub after lunch instead of watching to see what the Monarch had to say, you would not have batted an eyelid if, during the course of an increasingly alcohol-fuelled afternoon, you heard Geraint embark on *yet another* one of his sweary rants about the roadworks. On the other hand, in other contexts, your reaction to this sort of language would be different still. If somebody had delivered anything resembling the Sovereign’s potty-mouthed remarks during the funeral of one of your closest relatives while standing at the graveside watching the coffin being lowered into the ground, it’s likely that you would have been

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horrified, upset, decidedly unamused, and perhaps even angry, even if you're normally the sort of person who doesn't mind swearing at all. And if one of the staff at your toddler's nursery used this language in the presence of the children, you might be alarmed, and you might worry about this person's competence to look after your child. What is it about swearing that leads us to react so differently to it depending on who is swearing and where and how they're doing it? What—if anything—is wrong with swearing? And what sort of *wrong* are we dealing with here?

There are many puzzling things about swearing and its effect on us, but no less puzzling are some of the things we do to try to avoid causing offence through swearing. Let's return to our imaginary Queen's speech, which we left having observed that we could expect to find Her Majesty's tirade reported prominently and internationally in the news. Despite the inevitable interest from the media in reporting an event like this, it's unlikely that we would have found many news outlets reporting an unedited account of what was said. Instead, we'd have seen asterisks sprinkled across the headlines like festive snowflakes. Our Head of State would have been quoted as having described the foregoing twelve months as a *f***ing sh*t year*. In other words, we could have expected to find the newspapers censoring what the Queen said *even as they aimed to report exactly what she said*. Similarly, televised news footage of the speech would have used bleeps to replace the swear words, and perhaps also pixelated the Defender of the Faith's mouth in order to thwart attempts at lip-reading. And yet we'd all know exactly what it was she'd said, even if we hadn't seen the original broadcast. This way of 'sanitising' swear words to communicate them inoffensively is widespread and effective—but how does it work? How does *f***** manage to be less offensive than *fuck*, given that anyone who understands *f**** knows exactly what word is being communicated to them, and given that anyone who writes *f**** intends to communicate *fuck* to their readers? We're going to dive into all this.

It would be difficult to characterise swearing without mentioning its offensiveness, but swearing is much more than merely offensive language. For one thing, it's not always offensive. It can express

trust and intimacy, as when friends get together for a chat knowing that they will not be judged or rejected for expressing themselves using swear words that they would refrain from using in different company. It can sometimes be very entertaining, and it plays a large role in comedy. It can even be funny at the same time as being offensive; indeed, in the Queen's speech example, part of why some people are likely to respond with such glee to hearing Her Majesty swearing is precisely *because* they recognise that it is offensive and inappropriate. Of course, reacting with glee to something like this can feel a bit naughty, and when we witness it in the company of people who *are* offended, we often keep a lid on our amusement until later, when we can relax and relate the incident to our friends without offending anyone.

Even so, although it's usually a good and considerate thing to avoid causing offence, there are limits to how much we do and should care about other people being offended. In some cases, people take offence at the wrong things—things much more significant than a word used in poor taste in the wrong context. Some people claim to be offended by interracial marriage, homosexuality, women becoming priests, and breastfeeding in public places. It's far from clear that we should avoid exposing those people to those topics in order to avoid causing offence; on the contrary, more exposure to gains in equality and the changing nature of society is precisely what they need. If Amia is offended by Brandy's homosexuality, then it is Amia who is morally flawed, not those who cause her to feel offended by discussing Brandy's marriage in her company. In that case, how should we respond to someone's taking offence inappropriately? Should we avoid doing what causes them offence? Or, alternatively, does avoiding doing what causes them to feel inappropriately offended make us somehow complicit in their flawed moral judgement? By shining a spotlight on our reactions to swearing, we're going to get at some meatier issues that have to do with offence.

Taking care not to offend others is considerate, but here's something that nobody talks about: having the capacity to offend people by uttering swear words is a privilege. Most of us take for

granted that if we utter swear words in a polite context, those around us will be offended. But some people struggle to produce this sort of response in other people no matter what they say. They include some people with disabilities, children, and people who have an unusual appearance or manner. Since they are less able to cause offence, these people lack the capacity for an important and useful way of communicating with others and are worse off as a result. We'll explore this issue too, and we'll see that in an important sense, being offended by people is a way of respecting them.

Back to the idea of avoiding causing offence. Although we generally have no problem working out when (i.e. in which social contexts) swearing would be especially inappropriate, the normative dimension of swearing—the details about how we ought and ought not to swear, and why—is mysterious to us. For some of us, the very idea that there can be norms about how we should and shouldn't swear might seem senseless. Or, rather, it might seem that there is just one norm: we shouldn't do it, ever. (This is what many of us were taught as children.) For others, swearing is an important and valuable form of expression which shouldn't be reined in because some people are too up tight to deal with it—it's just words, after all. We'll see that neither of these approaches gets things quite right. Understanding the oughts of swearing requires digging down below the surface and exploring what gives swearing its power to affect us in the way that it does, what makes some instances of swearing more offensive than others, what we do to mitigate its offensiveness when we really want to communicate a swear word but really don't want to upset anyone, and why we find the whole topic so mysterious in the first place. We'll see that the norms of swearing are built upon a network of attitudes that we hold towards each other, which we typically signal indirectly and often without even realising what we're doing.

You might not agree with some of my conclusions; indeed, I'd be astonished if you were to find my entire argument—which is, in a nutshell, that the offensiveness of swearing isn't about the words at all—uncontroversial. My hope is that I might inspire you to reflect on these issues, discuss them with others, draw your own conclusions,

and gain some insight into how and why you and others use and respond to swearing in the way that you do. But disentangling these issues is about more than merely satisfying intellectual curiosity. It has important practical implications too. Our attitudes and responses to swearing shape society and culture in ways that run deep—and this happens despite the difficulties in articulating exactly why we have these attitudes and responses in the first place. In fact, despite it being somewhat mysterious why swearing bothers us so much, inappropriate swearing tends to be dealt with confidently and firmly. And sometimes, this results in injustice.

Let's get technical for a moment (I promise I'm not going to make a habit of it): individuals and organisations have a range of formal and informal ways of discouraging, censoring, and punishing swearing, to which I'm going to refer collectively as *anti-swearing measures*. These range from the informal social norms that reveal themselves in our intuitive sense of when swearing is really *not on*, to formal, explicit rules and even laws prohibiting swearing. The most informal anti-swearing measure, and also the most widely implemented, is simple disapproval. When we find ourselves in situations where swearing is inappropriate—a job interview, for example, or when meeting a romantic partner's parents for the first time—our awareness that those around us will frown upon our swearing is effective as a discouragement. If we forget ourselves and swear in a situation like this, we're likely to feel embarrassed and apologise. In other words, our anticipation of disapproval from the people around us leads us to self-censor: to keep our language clean when we're in polite contexts. In turn, other people's anticipation of our own disapproving attitudes contributes to those people self-censoring. In contexts where swearing is inappropriate, even if nobody actually swears and as a result nobody expresses disapproval, everyone's awareness that if they did, someone might, ensures that they don't, and that if they do, they feel embarrassed and apologise. As a result, without even realising, we are all signed up to an informal, voluntary scheme to regulate swearing. We recognise that there are contexts in which we should not swear, we participate in shaming others who swear in inappropriate contexts,

and we respond contritely in cases where we ourselves swear in those contexts and suffer the disapproval of our peers.

So: it's worse to swear in some social contexts than in others. But our intuitions about when swearing is and isn't inappropriate aren't just about what context we're in. Who is doing the swearing also matters. The way we respond to inappropriate swearing, and the pressure on the swearer to apologise, are magnified in cases where the swearer is a public figure; especially if the swearer is (like the Monarch) the sort of public figure that we expect to be a model of decorum. This illustrates that our intuitions about swearing are actually pretty complex: there's a range of factors we take into account (usually unconsciously, of course) when assessing just *how bad* a particular instance of swearing is. But our example involving the Queen raises another point about our responses to swearing too. Inappropriate swearing by a public figure, along with any subsequent apology (or lack of one), is often deemed newsworthy. This places swearing in the spotlight, in a way that doesn't happen when it's Geraint down the pub who's doing the swearing. When swearing makes the news, a contrite response from the swearer provides a public affirmation and reinforcement of the view that swearing is unacceptable; by contrast, shrugging off the incident sends the message that swearing is no big deal. Inappropriate swearing by public figures, then, often provides an opportunity to test wider attitudes to swearing. Such incidents can act as a barometer of swearing's offensiveness, and when the public's response changes over time, this is sometimes taken to indicate that the offensiveness of swearing has changed too.

As an example here, let's compare two related incidents of swearing, twenty-eight years apart. In 1976, British punk band the Sex Pistols famously swore while being interviewed by Bill Grundy on the British teatime TV show, *Today*. The incident cost Grundy his career; a result of the fact that not only did Grundy fail to condemn the first incident of swearing during the interview—in which guitarist Steve Jones said, of the band's earnings, 'We've fucking spent it, ain't we?'—but Grundy then encouraged the band to swear more, which gave rise to *shit*, *bastard*, *fucker*, and *fucking*. There followed

outraged headlines, cancelled gigs, and footage of the incident in music documentaries for decades to come.

By contrast, the public responded more apathetically in 2004 when former Sex Pistol John Lydon called a live TV audience of over ten million viewers *fucking cunts* while participating in the British TV reality show, *I'm a Celebrity . . . Get Me Out of Here!* This was despite his sweary outburst being, in an important sense that we'll explore in later chapters, *worse* than what was said in the Bill Grundy incident. One way in which it was worse was that Lydon's *fucking cunts* directly insulted the viewing audience whereas the Pistols' 1976 sweary utterances were either undirected (i.e. used as a kind of punctuation rather than addressed as insults to anyone in particular) or directed at Grundy himself following his encouragement of the behaviour. Another way in which it was worse is that it involved a more offensive word: *cunt* is widely regarded as the most offensive English swear word. Despite this, fewer than a hundred official viewer complaints about this remark were received by the UK's communications regulator Ofcom following Lydon's 2004 outburst. The nation wasn't scandalised, as it had been in 1976. Nobody lost their job, as Grundy did back then. The difference in the public's responses to the 1976 and 2004 incidents of swearing were widely seen as indicative of a shift in attitudes to the acceptability of swearing.[1] Here, then, was a case of the public's attitudes towards swearing being tested and examined via the media, and conclusions drawn.

While we're on the topic of swearing on TV, let's take a look at another aspect of anti-swearing measures. Swearing during a TV show is about more than informal attitudes towards swearing. TV broadcasts are subject to formal rules about whether, when, and how much swearing is permitted, and what happens if these rules are breached. There are regulations like this in place around the world. In the UK, Ofcom's Broadcasting Code restricts swearing to certain contexts and can impose fines on broadcasters when these rules are broken. In the United States, the Federal Communications Commission (FCC) sets rules about swearing in US TV shows,

although it is not allowed to fine broadcasters who break these rules. There has been an attempt in the US to tighten rules about swearing: in 2003, the US government considered (but subsequently decided against) implementing the Clean Airwaves Act, which forbade broadcast of

> the words 'shit', 'piss', 'fuck', 'cunt', 'asshole', and the phrases 'cock sucker', 'mother fucker' and 'ass hole', compound use (including hyphenated compounds) of such words and phrases with each other or with other words or phrases, and other grammatical forms of such words and phrases (including verb, adjective, gerund, participle, and infinitive forms). (Introduction of the Clean Airwaves Act, U.S. Cong., 149 Cong. Rec. E2486 [2003])

The *general* message sent by formal anti-swearing measures is that swearing is unacceptable, at least in certain contexts. However, if we want more specific guidance about exactly how much swearing, and of what sort, is acceptable in a given context, we quickly encounter rules that are so arbitrary as to be bizarre and almost senseless. The UK comedy writer Richard O. Smith related (in conversation) that in writing a half-hour show for BBC Radio 4, he was restricted to 'two shits and a wank'. Leon Wilson, producer of ITV's *Celebrity Juice*, one of the UK's swearier TV shows, is allowed four *motherfuckers* but unlimited *fucks* per thirty-three-minute show (Zaltzman 2015). Film director Ken Loach, responding to what he viewed as overzealous censorship by the British Board of Film Classification (BBFC) of his 2012 film *The Angel's Share*, complained about the 'world of surrealism' into which discussions descended. He commented that in order for the film to be granted a 15 certificate, 'We were allowed seven cunts . . . but only two of them could be aggressive cunts' (Higgins 2012). The 'surrealism' of rules like these arises from the attempt to capture and quantify all the nuance, vagueness, and messiness of public attitudes towards swearing. In the absence of a rigorous rationale, these rules seem disconnected from our everyday intuitions about swearing. (Most of us would be hard pressed to explain why, if four motherfuckers per thirty-three minutes is basically fine, five crosses the line into unacceptable

offensiveness.)[2] There are regular efforts to provide such a rationale—Ofcom, BBFC, and the UK's Advertising Standards Authority conduct surveys into public attitudes to swearing and use the results to inform regulations—but these generally take public opinion as their authority; as a result, they provide inadequate guidance in difficult or unusual cases, and they are silent on the issue of how to recognise when the public gets it wrong, and how to proceed in those circumstances.

Formal anti-swearing measures are not confined to broadcasting, of course. A schoolteacher who swears at one of their pupils, or a doctor who swears at one of their patients, risks breaching professional guidelines about conduct. Athletes who swear while competing may find themselves punished for unsporting behaviour. This is not to say that swearing is always *explicitly* prohibited in formal rules about conduct; very often, it is not. Instead, that one shouldn't swear in certain contexts is taken to be implied by more general rules about professional conduct and treating others with politeness and respect. That implication itself contains a tangle of unquestioned views about swearing, including judgements about when swearing constitutes disrespect—which, of course, it sometimes does, but not always.

The pinnacle of formal anti-swearing measures is the law. Swearing can get you arrested in many places across the globe. In the US, public swearing in the town of Middleborough, Massachusetts, is punishable by a $20 fine. Swearing in public counts as a class 4 misdemeanor in Virginia, and can attract a $250 fine. Swearing can count as disorderly conduct in several states including Utah, Texas, Arizona, New Jersey, and the District of Columbia.[3] In the UK, arrests for swearing tend to happen under Section 5 of the Public Order Act, which makes it an offence to use 'threatening or abusive words . . . within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby' (UK Pub. Gen. Acts 1986). In Canada, those who cause a disturbance by swearing in public are guilty of an offence, and in February 2015 the town of Taber, Alberta, introduced fines for

swearing (CBC News 2015). You can also get fined for swearing in several Australian states, and in 2014 New South Wales increased on-the-spot fines for offensive language from $150 (£80) to $500 (£270) (Dearden 2014). In 2013, the Australian government introduced a code of conduct for asylum seekers, which reportedly threatened deportation for a range of activities, including swearing (Gander 2014). In Russia, in 2014, the government passed a bill that bans swear words from films, music, and other works of art (Omidi 2014). In Iraqi Kurdistan, the Family Violence Law takes domestic violence to include swearing at children by parents (Parliament of Kurdistan-Iraq 2011). Singapore's 'outrage of modesty' laws have been invoked against swearing and led to the arrest in 2012 of an Australian man for swearing on a flight from Perth to Singapore (Lowe 2013). Convictions under these laws are punishable by two years in prison, twenty-four lashes with a cane, a fine, or a combination of these. In the United Arab Emirates (UAE), 'disgrac[ing] the honour or the modesty of another person', including by swearing, is punishable by imprisonment and/or a fine, with the severity of the punishment depending on whether the person sworn at is a public official, whether the insult is public, whether witnesses are present, and various other factors (Dhal 2013). Swearing is not illegal in China, but public opinion is divided on whether it should be. In 2013, Alpais Lam Wai-sze, a Hong Kong primary schoolteacher, swore at police officers during a confrontation between two political groups. A video of the incident went viral, triggering a demonstration of three thousand people at which there was some violence between Lam's critics and her supporters, who viewed her respectively as a potty-mouthed upstart and a defender of free speech (Tatlow 2013). In the wake of this, a survey of Chinese teachers found that two-thirds believe that swearing in their profession should be regulated by a code of conduct (Wei 2013).

The issue of whether and how swearing should be dealt with by the law is controversial. There is some confusion, it seems, about whether (and under what circumstances) swearing should count as disorderly conduct, or fighting words, or a breach of the peace, or threatening behaviour, or any other category of behaviour for which

one can get arrested. A landmark case here is *Cohen v. California*, which we'll return to later. This case saw the court decide that wearing a jacket emblazoned with the words *Fuck the Draft* warranted arrest and imprisonment, only to change its mind on appeal. This 1971 decision marked only the beginning of US law's confusion over *fuck*. The late Christopher M. Fairman, professor at Ohio State University Moritz College of Law, noted in his 2006 article 'Fuck' that since *Cohen* there have been judgements permitting *Fuck Hitler*, *Fucking orders*, and *Fucking genius*; and judgements prohibiting *Fuck the ump* and *Fucking brilliant* (Fairman 2006, 49).

Other English-speaking countries have not done much better. In the UK, Denzel Cassius Harvey's conviction and £50 fine for saying *fuck* while police officers searched him for drugs was overturned in 2011; a controversial decision which prompted Boris Johnson, who was London Mayor at the time, to pledge a zero-tolerance approach to swearing at the police. Four years after these zero-tolerance comments, Johnson was filmed yelling at a London taxi driver, 'Why don't you fuck off and die?', an outburst that suggests that Johnson views taxi drivers as less worthy of respect than police officers, or perhaps that members of the public should be held to higher standards of behaviour than politicians, or perhaps that he simply doesn't know his arse from his elbow when it comes to politics. Confusion about *fuck* and the law is perhaps most comically illustrated by a 2017 Australian case, in which Filip Black replied 'none of your fucking business' to a police officer who asked him what he was doing in the area. Black was arrested, only to be released a minute later when the arresting officer evened out the swear tally by telling Black that he was 'fucking worked up'. Black was then re-arrested when he told the arresting officer to 'fuck it right in your mum's pussy' (McGowan 2017).

Around the world, there is debate between those who oppose harsh penalties for swearing on the ground that they are an unacceptable infringement on free speech and those who support such penalties in the interest of eliminating antisocial behaviour, which some view as likely to lead to more serious transgressions if left unaddressed. It is possible, as we'll see, to take a more nuanced

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Exploring the Variety of Random Documents with Different Content

GIRLS' SCHOOLS IN MANILA AND THE PROVINCES

There are four colleges for the education of girls without taking into consideration the municipal school of Manila,[1] and the college of Santa Isabel, of Nueva Cáceres.[2] These are the college of Santa Isabel, that of Santa Rosa, that of Santa Catalina, and that of La Concordia, also called college of the Immaculate Conception, all located in the capital of the archipelago. Of all these institutions, the oldest is the college of Santa Isabel, founded in 1632 for the education of Spanish orphan girls by a pious foundation called the Santa Misericordia. In 1650, the first regulations for the government of the same were issued, which continued in force until 1813, when they were revised. The college is supported from part of the interest derived from the Misericordia legacy, administered by a board, of which the civil governor of Manila is the president. It also enjoys a grant of land in Tagudín, province of Pangasinán, by a royal cedula of March 14, 1680, which produces an income of 600 pesos per annum.

Until the beginning of the present century, nearly 13,060 girls had been educated in this institution.

In 1861, the governor-general of the archipelago added the royal college of Santa Potenciana to the college of Santa Isabel.[3] The former was composed of the orphan daughters of military men, and was a most ancient and beneficent institution, founded about the end of the sixteenth century by Perez Dasmariñas. It afforded shelter and protection to the orphan daughters of military men who had succumbed to the climatological influences of this country, or had died in the defense of their country.

The colleges were under the protection of private ladies and afforded quite sufficient instruction. In 1863, the sisters of charity assumed charge of the same, to the great advantage of the college and of the morality of the pupils.

In 1879, the college underwent a considerable reformation by order of Governor-general Moriones, who gave the college a new set of regulations and opened its doors to day pupils and half-boarders, and in 1880 the board of directors established new chairs, which make this establishment one of the most complete for the education of European young ladies.

Girls admitted are given a dowry of 500 pesos, but under the condition that they must first secure the title of teacher, without which requisite, even though they get married, they are given nothing. When they have concluded their studies, they engage in work, and the college reserves to them one-half of what they earn, which is added to their dowry.[4]

Retreat and college of Santa Catalina

The college of Santa Catalina follows next in order of antiquity to the college of Santa Isabel. It was founded in 1696 by the provincial, then belonging to the Dominican order, the very reverend father, Juan de Santo Domingo.

There were purchased for the purposes of the college, at the account of the province of Santísimo Rosario, some houses adjoining the convent of Santo Domingo, to serve as an asylum to the young ladies who desire to consecrate therein their virginity to the Lord.

The institution was inaugurated on the day of St. Ann, of the year mentioned, after the approval of the rules to be observed, in conformity with the spirit and statutes of the Tertiary Order of St. Dominic, with some modifications for the proper interior régime, based upon the principal laws and ordinations of the province of Santísimo Rosario. On this day some ladies who had long before adopted the dress of the Tertiary order, took the vows, binding themselves to the strictest observance of the new rule, and taking the three religious vows with all the necessary formalities.

Among the new nuns was the sister of Mother Francisca, who, in order to adopt the Dominican vestments, left the rectorate of Santa Isabel.

The new retreat was given for a patron, the seraphic mother, Santa Catalina de Sena. It was also ordered that there should be only fifteen choir nuns, in honor of the mysteries of the rosary, with some lay sisters to attend to the material service.

The foundation of this retreat was approved by a royal despatch signed February 17, 1716, which put an end to the various petitions which had been submitted to the court against its installation. In 1732, a new cedula granted the retreat the right to have a church with a bell, and prescribed, at the same time, that the inmates were not required to observe retirement by a rigid vow, but only for the purposes of good administration.

The practice observed is that the sisters never pass through the inside door of the convent, which is in charge of one of the gravest sisters, but any person can enter it with express permission from the provincial.

Although in the beginning, the college of Santa Catalina was nothing but a house, to which Spanish ladies, desirous of renouncing the vanities of the world and of devoting themselves entirely to the service of God, retired, the Dominican order did not long delay in assigning some of the sisters to instruction in a college. From that time, the retreat took the character of a college, where the pupils, at the same time that they were instructed in reading, writing, Christian doctrine, and other work suitable to their sex, learned to practice virtue.

In 1865, it was deemed proper to increase the number of sisters fixed when the retreat was established, in order to be able to extend instruction further, and thus place the college on the same level as the best equipped colleges of the same class in this capital.

The inmates of this institution are not permitted to leave it without good cause.

They may be visited by their parents and other friends and acquaintances in a reception room located near the door of the college.

After the earthquakes of 1880, notable improvements were made in the material part of the building;[5] and at the present time, in the departments necessary for the good service of the college, this establishment has a spacious working-room, large class-rooms, well-ventilated dormitories, a beautiful bathroom, and an ample and capacious dining-hall.

The retreat is managed by a prioress, elected every three years by the sisters, who acts, at the same time, as the mother superior of the college; at the head of the latter, nevertheless, there is a directress in charge of the instruction.

The spiritual direction of the retreat and college is in charge of a father of the order, appointed by the corporation for the charge of vicar.[6]

College of Santa Rosa

This establishment was founded in 1750 by the Paulist Mother de la Trinidad, a nun of the Tertiary Order of St. Dominic. She arrived in Manila the preceding year, whither she had resolved to come from the Peninsula, desirous of consecrating herself to the good of others. Being convinced that the greatest service she could render the public was to establish an educational institution, she immediately took steps to carry out her holy work, and in a short time by her ardent zeal she secured sufficient funds for the establishment of a retreat, where she supported on charity a certain number of native young women for the purpose of educating them in the fear of God, in Christian doctrine, and in all exercises suitable for a woman. This was done so that, whether they left the retreat of their own will and married or remained therein, they would develop strong moral principles.

His Majesty has taken this college under his royal protection, and the regent of the Audiencia supervises it in his name, with the corresponding powers.

The spiritual direction is, at the present time, entrusted by the archbishop to the very reverend Fray José Corujedo, former provincial of the corporation of St. Augustine.

Up to January 26, 1866, the education of the girls was in charge of elderly ladies, of well-known education and virtue, who acted as teachers; but, on this date, by superior order, the sisters of charity undertook the direction of the institution, which they discharged to the satisfaction of all.[7]

College of La Concordia or of the Immaculate Conception

In the town of Paco, a suburb of Manila, there is a college, which was inaugurated May 3, 1868, ordinarily called the college of the Concordia. The entire grounds and part of the building, which now serves as a college, were piously donated to the sisters of charity by a charitable lady named Margarita Roxas, whose picture is exhibited in the reception room. Five-sixths of said college have been built since its foundation.

This college is the exclusive property of the sisters of charity, who act at the same time as teachers therein. It occupies a very picturesque and open position on a beautiful plain between the towns of Paco and of Santa Ana, and has very capacious and well-ventilated rooms.

It is the central building of the sisters of charity of the Philippines, and usually a priest of the congregation of the mission, entrusted with the spiritual direction of the college, lives therein.

The studies and work in this college and the distribution of classes are identical with those of other colleges.

From the date of the foundation of the college, up to the present year, 62 pupils have been examined for teachers, of whom 35 were classed as excellent, 17 as good, and 10 passed.[8]

Asylum of St. Vincent of Paul

This institution is situated in Paco, a suburb of Manila, in the barrio of Looban. The building and its grounds, belong to Sister Asunción Ventura, a sister of charity, who, being anxious for the welfare of poor girls, donated it to the congregation of the sisters of charity, in order that said building should be used as an asylum for the education of about 30 poor girls. The

institution was inaugurated on November 26, 1885. Pay pupils are also admitted for the moderate fee of 6 pesos per month.

The sisters of charity of this institution number 5.

Boarding pupils,	37
Poor pupils,	45
Servants,	9
Total,	91

The pupils are taught Christian doctrine, reading, writing, Spanish grammar, and the four rules of arithmetic. They are also instructed in the work of their sex—sewing, embroidering, the making of artificial flowers, and some in housework, such as cleaning, cooking, washing clothes, etc.

College of San José de Jaro

On May 1, 1872, the sisters of charity opened, with the permission of the vice-royal patron, the college of San José, in Iloílo, for the instruction and education of girls. In doing this, they acceded to the wishes expressed by some good Spaniards and some principal citizens, and supplied a want in that capital. This college continued in existence until 1877, when it was closed on account of the lack of funds, as it had no funds but those derived from the fees of the pupils, who were very few toward the end.

Fray Mariano Cortero, bishop of Jaro, availed himself of the opportunity to call the sisters to his city, and placed the school in their charge. A house was leased, and beside it a frame building was constructed for school purposes, able to accommodate about 200 girls. Up to 1881, no boarding pupils were accepted, on account of the lack of room; but later, at the request of some families, some girls were admitted, the number of whom gradually increased to 50—too large a number for so small a house. This led to the necessity of enlarging the building, which was done by raising the school roof, and making an upper story, by which means a large and spacious room was scoured as a dormitory for the girls, besides a beautiful chapel.

Instruction is divided into three classes—superior, secondary, and primary. In the lowest class, reading and Christian doctrine are taught. In the secondary class, Christian doctrine, reading, writing, sacred history, and arithmetic are taught. In the superior class, the reading of printed and written matter is taught, as well as the writing of Spanish and English characters, geography, sacred and profane history, and arithmetic, as well as piano for those who wish. They are also instructed in the work of their sex —sewing, embroidering, artificial flowers, etc.

Convent of San Ignacio

Its foundation dates back to the year 1699, and it was directed by the fathers of the Society of Jesus until they were expelled in the last century, when it passed to the charge of the provisor of this archbishopric. Its original object seems to have been that of educating native girls in the fear of God, and to give them primary instruction and instruction in the work of their sex. This retreat serves as an asylum for devout women.

Since 1883, a school has been established in this retreat, with three teachers. They teach reading from the first letters, Christian doctrine, compendium of morals, sacred history, courtesy, arithmetic, Spanish grammar to the analysis of analogy, and in addition they have every week an explanation of the gospel, in charge of a priest of the secular clergy.

Needle-work is taught from the first stitches to the finest embroidery.

Oil painting is also done in this institution, and we have a teacher of embroidery, who is an expert in this art, and whose work is much applauded."[9]

[The following girls' schools are noted also by *Archipiélago Filipino*, i, p. 353.]

Schools for the education of girls, which, without having the rank of normal schools, exist outside the capital of the archipelago, are principally the four following, the first three of which are in charge of the Dominican nuns.

That of Nuestra Señora del Rosario, founded in Lingayén (Pangasinán), in 1890, with 60 pupils; that of Santa Imelda, founded in Tuguegarao (Cagayán de Luzón), in 1892, with 81 pupils; that of Nuestra Señora del Rosario, in Vigan (Ilocos Sur), with 90 pupils; and finally, that of San José de Jaro, under the direction of the sisters of charity, with 116 resident pupils, 160 day, and 14 half-boarders.

Lastly, centers also devoted to the instruction of girls are the Real Casa de Misericordia in Cebú, the beaterio of the Society of Jesus in Manila, and those of Santa Rita in Pasig, and San Sebastián in Calumpang. However, we shall not review them here, as they are chiefly religious institutions.

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1 See VOL. XLVI, appendix, for the regulations of the municipal school for girls. ↑

2 See *ut supra*. ↑

3 The school or college of Santa Potenciana was suppressed in 1865, and its building became the provisional palace of the governor general. Its collegiates reduced to twelve were transferred to the school of Santa Isabel. See Barrantes's *Instrucción primaria en Filipinas* (Manila, 1869), pp. 17, 18, note. ↑

4 See an account of this school in *Archipiélago Filipino*, i, p. 352. ↑

5 See *Archipiélago Filipino*, ii, pp. 280 *et seq.*, for data regarding earthquakes in the Philippines. A number of shocks are recorded for 1880, but none especially disastrous. ↑

6 See also *Archipiélago Filipino*, i, pp. 352, 353. ↑

7 See also *Archipiélago Filipino*, i, p. 353. ↑

8 See also *Archipiélago Filipino*, i, p. 353. ↑

9 The following results of a table show the following statistics in regard to girls' schools between the years 1864–1883. Santa Catalina: boarding pupils, 1,617; teachers, 7. Santa Rosa: boarding pupils, 2,959; teachers, 23. Concordia: boarding pupils, 2,103; day pupils, 623; teachers, 32. Santa Isabel: free boarding pupils, 475; pay boarding pupils, 149; day pupils, 112. Municipal school: day pupils, 5,163; teachers, 74; awards conferred, 332; accesit, 1,058. The instruction given in these institutions was always under the immediate direction of the friars, and was consequently of a religious character. Some of them were known as *beaterios* or retreats, institutions devoted primarily to religious practice. Primary and secondary instruction were both given. In some of them the instruction was very poor,

as many of the scholars graduated without knowing how to speak Spanish. It was only in the college of Santa Isabel, in the municipal school, and in some private schools that adequate instruction was given. Some of these colleges were houses of recreation or of rest rather than educational institutions, where not only girls, but women, both married and single, went to pass some time, for the purpose of change or to renew their clothing. Girls from the provinces often attended the schools in Manila to learn the social manners and polish of the capital, but they often failed of their purpose, for social education was frequently neglected in them. The class distinction between Spanish, mestizo, and Filipino girls was unfortunately inculcated. The principal ends of the sisters of charity being the care of their convents and hospitals, they could not obtain as good results in education as if their time had been spent entirely in that field. See *Census of Philippines*, iii, pp. 620, 621. ↑

SCHOOL OF AGRICULTURE

The Manila school of agriculture was created by royal decree of November 29, 1887, and established at Manila, July 2, 1889.[1] The objects of the school were: the theoretical and practical education of skilled farmers; the education of overseers; the promotion of agricultural development in the Philippines, by means of observation, experiment, and investigation. In order to enter officially into the study of scientific agriculture, it was necessary to be vouched for by a valid certificate, to be of good health, and to have studied and have passed examinations in some institution of secondary education, or other properly accredited institution. It opened with 82 students, but in the following year there were only 50. Agricultural stations were established in Isabela de Luzón, Ilocos, Albay, Cebú, Iloílo, Leyte, Mindanao, and Joló. Those of Joló and Leyte were abolished by royal decrees, dated September 10, 1888, and December 7, 1891, respectively. The course of studies was as follows: First year—elements of agriculture; mathematical problems; practical work in topography; linear and topographical drawing. Second year—special methods of cultivation; elements of stockbreeding; agricultural arts; practical work in cultivation and the industries; setting up and management of machines; drawing applied to machines and to plants. Third year—elements of rural economy; accounts and agricultural legislation; general practical work in cultivation, stockbreeding, and industry; drawing of plans. The education of the overseers was carried on in the agricultural stations, which have been created for the purpose of doing technical work in analyses of earth, systems of irrigation, studies of seed, acclimatization of vegetables and animals, study and treatment of epizootic, epiphysis, etc. The professors in the school were agricultural engineers and their assistants skilled farmers. The expenses were defrayed entirely by the government, but the direction was in the hands of the priests. The university of Santo Tomás, both of itself, and through the Ateneo Municipal, issued certificates to skilled farmers and surveyors, for which it required mathematics, physics, chemistry, natural history, agriculture, topography, and linear and

topographical drawing. The government school cannot be said to have been a success, for the Filipinos, while inclined to readily adopt the professions, have never shown any marked inclination for industrial pursuits.

Since American occupancy. By section 19 of act 74 of the Philippine Commission it was provided that there should be established and maintained a school of agriculture in the island of Negros, and by section 24 of the same act, the sum of $15,000 was appropriated out of any funds in the insular treasury not otherwise appropriated for the organization and maintenance of the school for the year 1901. It was suggested that such a school be established on the government plantation at La Carlota, but it is an inaccessible place, and it was proposed to find a more convenient place. The organization of the school was delayed in order to bring it into connection with the proposed experimental sugar plantation in Negros. By act no. 512, passed November 10, 1902, the work of establishing an agricultural college was transferred from the bureau of public instruction to the bureau of agriculture, and the government farm at La Granja in western Negros was set aside as a site for this school, and for an experiment station to be conducted in connection with it. After a long delay, plans were submitted for a main building to contain laboratories, class-rooms, offices, and also a dormitory. Twenty-five thousand dollars were appropriated for its construction. Arrangements were made, however, by which certain teachers in the provinces were to be employed to coöperate with the bureau of agriculture in making various experiments and in gathering such information as might be useful in promoting knowledge of the agricultural conditions of the islands. At the same time the law establishing secondary instruction in provincial schools provided for the extension of the curriculum beyond the ordinary course of high-school instruction and instruction in agriculture, which meant that the provincial schools might, on a larger or smaller scale, as the authorities of the province might determine, carry on instruction and experiments in such branches of agriculture as might be supposed to be adapted to the conditions in the province in which any provincial school was established. March 25, 1903, a director of the experiment station was appointed in order that he might take charge of the government property on the estate and begin the work of getting land under cultivation.[2]

1 This school must not be confused with the Agricultural Society of the Philippines, an institution created November 15, 1881, and a dependency of the department of general inspection of forests, especially as the separation of these two institutions was effected in July, 1884. See *Report of Commissioner of Education*, 1899–1900, ii, pp. 1625, 1626.

A school of botany and agriculture was ordered created in Manila by royal decree of May 29, 1861, under the dependency of the governor of the islands and the immediate supervision of the Sociedad Económica. The site called Campo de Arroceros was set aside as a botanical garden for the practical exercises of the school. The school was to be composed for a time of one botanical professor, director at the same time of the botanical garden, with a salary of 2,000 pesos; of two teachers of horticulture, at salaries of 500 pesos; of ten workmen chosen from the pupils, who being relieved at three year periods, were to receive 100 pesos apiece annually; while the municipalities could name certain pensioners to study in the school. The sum of 2,000 pesos annually was set aside for the material expenses of the garden and school, and the purchase of plants and tools. The total expense of both institutions was fixed at 6,000 pesos—3,000 being paid by the public treasury, 1,500 by the communal treasuries of the Indians, and the remaining 1,500 by the funds of ways and means of the Ayuntamiento of Manila. In 1894–95, the staff of the school of agriculture was allowed 23,794 pesos, and the equipment of the same, including the rent of a house for workrooms of the school, Board of Agriculture, Industry, and Trade and office of the agronomic service, 9,900 pesos. The subaltern staff of the botanical garden cost, according to the same budget, 2,600 pesos, and the equipment for the same, 1,000. See Montero y Vidal, *Historia*, iii, pp. 317, 318, and note. ↑

2 See also *Report of Philippine Commission*, 1902, ii, p. 499. ↑

GOVERNMENT REORGANIZATION OF EDUCATION IN THE UNIVERSITY OF SANTO TOMAS

CONFERENCE ON THE COLLEGE-UNIVERSITY OF SANTO TOMÁS OF MANILA, AND THE DECISION RENDERED BY SEÑORS MONTERO RIOS, GAMAZO, AND MAURA

Conference

1. Whether in view of the writ of foundation of the college-university of Santo Tomás, which is enclosed, the ministry has the right to reorganize education therein, without taking account of the religious corporation of the Dominicans.

2. Whether, in case of a ministerial resolution, contrary to the native autonomy of the said college, the latter may offer opposition by legal means, and what would be the most efficacious method.

Decision

The foundation of the college of Santo Tomás, which seems to have been commenced under the advocacy of our Lady of the Rosary, in Manila, was ordained by a writ of April 28, 1611, before the notary of his Majesty, Juan Yllán, in order to observe the last will of the deceased archbishop, Fray Miguel de Benavides; and to the new institution were applied besides, the few resources which the latter left, and others also modest, which proceeded from the estates of Pablo Rodriguez de Aranjo and Anfrés de Hermosa. There were hopes that new liberalities would augment the capital of so useful a work. Its origin is, then, entirely private.

Section 1 of the said foundation spiritualized the properties and their future increases, so that use might be made of them under such concept for the

ministry of the college, and the welfare of the souls of the three deceased testators, and of future benefactors. Section 2 entrusted the management to the then or future father provincial of the Order of Preachers of St. Dominic. Section 3 gave the government correction, and instruction of the college to the prior of the convent of that order in Manila. Section 4 allowed the provincial, as patron, to appoint the lecturers who were to give the instruction, and the workmen and helpers necessary for the good administration and for the temporal government, except that if any ecclesiastical or secular person were to endow the college with a large sum, the chapter of the province could give him the patronage, provided that he did not introduce any innovation, contrary to the authority of the father provincial in respect to the provision of lectures, or withdraw the college from the Order and province [of the Preachers], or deprive the prior of the management. Section 5 established that the arts and sciences should always be read and taught in the college by the religious of the province and Order [of the Preachers], and not by any other order, or by seculars. The same was true in regard to the religious pupils, and for the secular collegiates. Section 6 permitted the admission of bequests, gifts, and other aids weighted with charges of piety, which the convent was to fulfil and observe [*levantaria*]. Section 7 gave to the provincial chapter the power to make new rules and regulations, both in regard to the distribution and administration of the properties, and in what related to the ministry and instruction, and to appoint a rector. Those rules once made were not to be changed without the special authority and order of his Holiness. Section 10 says: “If at any time, any ecclesiastical or secular prince should try by act and right to exercise any power by way of patronage or in any other manner, in order to try to dispose of the properties and incomes of the said college, or to meddle with the administration and government of it, or hinder and disturb its effect in any way and manner whatever, and by means of any judge or powerful person, or by any other person who may do it, from that time and thenceforth, we apply the said properties and estates with which the said college is founded, and all the others which shall be augmented and applied, and which it shall receive in any manner, to the said province and to the religious of the said order, so that the latter may possess and enjoy as its own properties, acquired by just and right title, all of that property with the said houses and college, and their increases and improvements. We consider

this foundation [under such circumstances] as null and void, and as if it had never been made. The said order is charged to be careful to say masses and other benefices and suffrages for the souls of the said archbishop and the others with whose alms and properties this foundation is begun, and all of those who, in the future, in any time and manner, shall leave and apply any other properties to it, so that by this way satisfaction may be given on the part of the said province, for the said alms, to the givers of those alms."

Although the writ of 1611 does not indicate that its signers thought of it, the royal license was inexcusable. According to law i, título iii, book i, of *Recopilación de las leyes de Indias*, it was ordered from the time of Felipe II that permission should be petitioned before the building of a church, convent, or hospice, for the conversion and instruction of the natives, and the preaching of the holy gospel. Law ii of título vi, devoted especially to the royal patronage, ordered that no cathedral or parish church, monastery, hospital, or votive church, should be erected, instituted, founded, or constructed in any other pious or religious place, without the express permit of his Majesty. However, law xliii, of the same título, rules that when any person wishes to found a monastery, hospital, hermitage, church, or other pious and charitable work in Indias, from his own property, the will of the founders shall be observed, and the persons appointed and summoned shall have the patronage. The attributes of the royal patronage which declare that "our permission shall be received beforehand for whatever is needed," shall always be reserved.

Royal permission, beyond any doubt, was obtained, although by an indirect method. For law liii, of título xxii, [book i] (which treats of universities and general and private studies in the Yndias) declares that "by the license of the ordinary and governor of the Filipinas Islands, and the decision of the royal Audiencia of those islands, the religious of the Order of St. Dominic in the city of Manila, founded a college where grammar, arts, and theology were read, in which they placed two religious of each branch, and twenty secular collegiates. Great gain resulted therefrom," and it is ordered that for the present and so long as his Majesty orders no other thing, "the religious make use of the license which the governor gave them for the foundation." That was not to be understood "to the prejudice of what was ordained in

regard to similar foundations, so that they should not be instituted or commenced without express permission" from the king.

With such requirements, respect for the foundation is declared not only by the judicial force of the foundation itself, but also by the above-cited law xliii of título vi; for that respect is equally capable of being required from persons and authorities who are strange to the institution, and from the patrons, administrators, and ministers of the institution itself. The will of such patrons would have no power against the fundamental law whence proceeds their authority. Their end is to preserve and obey that law strictly, and to cause it to be respected by others without any change or violation of it by them. The admissible innovations in the institutions under discussion have the limit and form which were laid down by the foundation. Consequently, therefore, those innovations which might have been made in the patronage, in the administrative management, or in the academical order, provided that they respected that limit and observed the jurisdiction and formality laid down by the writ of 1611, could not be considered as violations, but as faithful applications of the peculiar law of the college.

The first part of the conference admits only the following categorical reply: "In the college-university, the ministry has no right to reorganize the instruction." It has a right, beyond any doubt, to organize the public instruction in Manila, in the manner which it considers most adequate for obtaining the ends of the same. One of the fundamentals which it may adopt could be the elimination [as teachers] of the fathers of the said order. But that will not fall within the college whose foundation we have before us, and the funds and properties of the same cannot be applied totally or partially to the university or college which the government may erect in such manner.

The section of reversion, literally copied above, will have its desired effect fully, in the case under consultation (unless permission is given to reconstitute the private institution in regard to the ruling of the writ of 1611), with entire independence of the academical institutions of the state. The disagreement [*disyuntiva*] would be between this and the reversion of the properties. Therefore, it is sufficient to call to mind the succinct but

faithful review which has been made of the cardinal fundamentals of the foundation, in order to have proved that the reorganization of education, which the ministry of the colonies, laying aside all consideration of the community [*i.e.*, of the Dominicans], might order, would wound and destroy in an essential manner, the will of the founders. If that should happen, the province of Santísimo Rosario and the Dominican religious of the province, would not only have the right to recover the properties, and give them the pious application assigned by the section, but also would not have the power to refrain from it, and consent that such properties remain applied to the needs of the teaching institution reorganized by the government. The patrons of a charitable fund, or any other permanent foundation, can never convert the authority of such contrary to the observance and purity of the institution confided to their care. The acts of the patrons, contrary to the foundation, possess the vice of nullity.

The lawyers undersigned have no exact and minute information of the vicissitudes which the college-university has experienced from 1611 to the present day. Comparing alone the royal decree of October 29, 1875, which reorganized the instruction of the said college with the writ of its primitive foundation, it appears that some rulings of the former are at variance with the latter: for example, article 3, which declares that the orders, plans, programs, and regulations, which emanate from the ministry and in that case from the governor-general, are obligatory for the organization and rule of education; article 6, and the following ones which allowed entrance to secular professors and defined their emoluments and fees; article 11, which reserved to the ministry the power of fixing the fees of matriculation, degrees, titles, and certificates; and article 13, which obliged the rector to render an annual account to the royal vice-patron of the emoluments and expenses of the university, the order supplying the deficit resulting. But we are not consulting as to the greater or less legal stability of the present condition of the institution or if we were treating of it, it would not be within our province to disavow that in other things of great importance, the government still respected the fundamentals of the foundation, and that the concessions which were made in 1875 in exchange for obtaining by entreaty the abolition of the decrees of November 6, 1870,[1] appeared practically corroborated by the lasting agreement of the patrons and of those

summoned to obtain the properties by virtue of the clause of reversion, although in strict rigor of law the document of the foundation ought to take precedence over any act and any submission of its natural guardians.

For the concrete matter of our opinion, we have only to declare that we do not believe that the former more or less extreme mildness of the patrons in the presence of the interference, which rejected the foundation, weakens the actions of the patronage of the college and of the ecclesiastical province favored by the clause of reversion in order to demand the observance of the foundation, if, perchance, the ministry of the colonies, exercising powers which indubitably belong to it, reorganize the instruction of the university without considering the religious community of the Dominicans. Even in the hypothesis of considering as illegal the tolerances or concessions of former times, the foundation, pure and simple, is the criterion and only norm with which the dispute can be adjusted.

The second point of the conference offers no difficulty in whatever concerns the existence of a legal means for opposing a resolution of a government contrary to the native autonomy of the college. Leaving aside the attributes of the ministry to direct the services of education as it deems most suitable, whenever they are sustained by the public funds, the opposition, if it limit itself to the use of the properties and funds from private origin, which today endow the institution, would have a legal mean beyond any doubt, to demand the strict observance of the law of foundation.

What would this mean be, or which of the two possible means appears more efficacious? Would it be by bringing the complaint before the court of *contencioso-administrativo*[2] or before the ordinary justice?

The law of September 13, 1888, applicable to Filipinas, according to article 4 of its transitory rulings, marks the bound of the jurisdiction of the court of *contencioso-administrativo*. Perhaps the generic notes of article 1 of the said law would be found in a manner suited to the resolution of the ministry. That article would occasion a report [*estado*]. In what concerns the application of the properties and the incomes of the institution, it would emanate from powers subject to rule, and not discretional, and would

wound a preëxisting right of a certain administrative character. For, besides the original royal permission and that of the protectorate general in regard to the foundations, the public administration has intervened, intertwining the public service of the instruction of that university with the private foundation. But article 4 of the law excepts the questions of a civil nature, and of the competency of the ordinary jurisdiction, the questions in which the right violated may be of a civil character, and also those which emanate from acts in which the administration has taken part as a legal person, or as one subject to rights and obligations. Of a character essentially civil would be the right violated by the hypothetical ministerial decision of which we are treating, reducing to accidental mixtures the ancient connections of the college founded by private persons, with the administration, which was advantageous to the opportunities which the college offered for the service of education. In strict terms one might add that the government, although it would perform judicial acts as a public power, in determining the future system of education, in exchange ought to be considered as a legal person, in so far as it should attempt to obtain by entreaty from the patrons of the college, the aid of the properties and incomes of the legal person incarnate in them. But the notoriously civil character of the laws which are involved in the observance of the foundation of 1611 are sufficient so that we might consider as definitive that the courts of justice would be those summoned to impose on the government respect for the will of the institutors, the owners of the properties with which the college is endowed.

But not because we do so understand it (as without vacillation we do understand it), can we advise that the *contencioso-administrativo* demand be left out of the claim. Action must be begun in its proper time and manner before the special court, with the intention that on that court rejecting the demand, as outside its peculiar jurisdiction, it would leave out of all doubt the jurisdiction of the common court. In this manner, it is probable that the attempt would be made to take advantage of the ambiguity, and maintain that the result of the deliberation had been consented to because of the lack of the other appeal, confusing with episodical and accidental discussions the controversy over the substantial and fundamental matter. The preliminary attempt of *contencioso-administrativo* appeal causes no disgrace to civil actions which have a longer life.

In conclusion then, the undersigned believe:

1. That, although the ministry of the colonies can alter at its discretion the system of public education in Manila, it has no right to apply the funds and properties of a private origin, today assigned to the college-university of Santo Tomás, to the establishment which it organizes, without considering the religious corporation of the Dominicans, or by infringing in any other manner on the foundation of the said college. Consequently, it cannot make any similar reorganization in that college.

2. That, if a ministerial decision shall be dictated contrary to the sacred and inviolable law of the foundation of the college, the most efficacious legal means to oppose the violation of the same and obtain its observance by entreaty would be to bring an ordinary civil suit before the courts of common law, but in order to free the road of the difficulties of this suit it would be advisable to try previously the *contencioso-administrativo* appeal, in the time and manner assigned by the law of September 13, 1888.

This is our opinion, but we will give place to any other that is better founded.

Madrid, October 29, 1890.

Doctor E. Montero Rios
Doctor German Gamazo
L. A. Maura

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1 See *ante*, pp. 132, 133, also pp. 163–165, note 81. ↑

2 Concerning this court, the first report of the Philippine Taft Commission, *Historical resumé of the administration of justice in the Philippine Islands*, by Cayetano S. Arellano, chief justice of the supreme court, pp. 228–230, says: “This court—in English, Contentious Court—arose from the establishment of a council of administration in these islands under the provisions of a royal decree of July 4, 1861, which surrounded the governor-general of these islands, who was president of the court, with prominent men who advised him by their votes on consultation. This contentious court consisted of three officials of judiciary,

the president and two magistrates appointed by turn among those constituting the personnel of the Audiencia, with the exception of the presidents of the branches and two officials of the administration, who were known as the administrative magistrates; subsequently, by royal decree of the third of June, 1866, the court was reduced to a president and three magistrates. This court took cognizance of suits brought by private persons against the State, whenever they were litigated. Complaints of private individuals against the administration of the State, if not subject to litigation, could, after presentation of appeals to the governor-general of the islands, be taken upon a recourse of complaint to the colonial office in Spain if no relief was obtained under the decision of the governor-general." A decree of February 7, 1869, provided that the "contentious administrative jurisdiction, which was exercised by the councils of administration of the provinces of the colonies should in the future rest in the territorial audiencias of those provinces; that, for the exercise of this jurisdiction, there should be organized in each Audiencia, as is done here, a department composed of the president of the same and the two presidents of the branches, the representative of the State being the attorney-general. The theory upon which the former organization of this contentious administrative tribunal rested was the administration of the State in respect to its litigation with subjects. The judge-advocate was both judge and litigant at the same time. However, the decree of the seventh of February, 1869, inspired by the principles proclaimed by the revolution, was that these questions should be decided in the same manner as any other issue between private individuals. These suits, as has been seen, were brought in first instance before the Audiencia of the territory; consequently, appeals in second instance lay before the supreme court of justice of Spain. But by the other theory the first instance pertained to the contentious tribunal of the council of administration, and second instance of the council of State of Spain, to which appeals might be taken against decisions of the former court. But this reform, well received, both in Spain and in the colonies, was of short duration, for one of the first acts of the government of the monarchical restoration was the reëstablishment of the contentious court in the same form in which it had existed prior to the reform of the royal decree of the nineteenth of March, 1875." This court lasted until the end of the Spanish régime.

Act 136, enacted by the Philippine Commission June 11, 1901, and in effect since June 16, 1901, provides for the organization of courts in the Philippines. Article 38 of that act reads as follows: "All records, books, papers, causes, actions, proceedings and appeals lodged, deposited, or pending in the existing Audiencia or Supreme Court, or pending by appeal before the Spanish tribunal called '*Contencioso administrativo*' are transferred to the Supreme Court above provided for, which has the same power and jurisdiction over them

as if they had been in the first instance lodged, filed or pending therein, or, in case of appeal, appealed thereto." See *Public Laws and Resolutions* of the U. S. Philippine Commission, for quarter ending August 31, 1901. ↑

Colophon

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